



COSTAS CYPRUS  
[CCYPRUS@WBGLLP.COM](mailto:CCYPRUS@WBGLLP.COM)  
ADMITTED IN NY

August 7, 2023

**VIA PACER**

Hon. Mary Kay Vyskocil  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/7/2023

Re: **Letter Motion to the Court pursuant to Local Rule 7.1**

Gargy Pierre-Louis et. al. v. Custom Metalcrafters, Inc. and Stephen Rosner  
Case No.: 22-CV-06717

Venue: SDNY

Our File No. 01881.00001.00001

Dear Hon. Vyskocil:

Our office represents, Defendants, Custom Metalcrafters, Inc. and Stephen Rosner (collectively the “Defendants”) in the above action. Pursuant to Rule 37 of the Federal Rules of Civil Procedure (“Fed.R.Civ.P.”), Local Rule 7.1, and your Honor’s Rules, we respectfully ask that Plaintiffs be precluded from offering any evidence pertaining to Defendants’ First Requests for Production of Documents (for each individual Plaintiff) and Defendants’ First Set of Interrogatory Demands as outlined in Defendants July 31, 2023 correspondence, attached herein as **Exhibit “A”**. We also respectfully ask for an extension of time to conduct Plaintiffs’ depositions given that the current deadline as per the Court’s Civil Case Management Plan and Scheduling Order, dated May 23, 2023 (hereinafter “Scheduling Order”) sets forth that depositions and fact discovery are to be completed by August 30, 2023.

Defendants are owed extensive discovery, which remains overdue, as of this filing, and as is further clearly itemized and delineated in our correspondence sent to Plaintiffs’ counsel July 31, 2023 containing hyperlinks to all of Defendants served discovery demands, attached herein as **Exhibit “A”**, specified herein below for ease of reference. Indeed, other than certain limited initial disclosures Plaintiffs had not provided any discovery responses.

1. First Requests for Production of Documents and Interrogatory Demands **Gardy Pierre Louis – served on May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [51](#), [62](#);
2. First Requests for Production of Documents and Interrogatory Demands **Darwin Gonzale z– served on May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [57](#), [63](#);
3. First Requests for Production of Documents and Interrogatory Demands **Oscar Manuel Ogando Rosario – served on May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [60](#), [70](#);



Hon. Mary Kay Vyskocil  
August 7, 2023  
Page 2

4. First Requests for Production of Documents and Interrogatory Demands **Jose Paez** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [56](#) [68](#);
5. First Requests for Production of Documents and Interrogatory Demands **Frank Ramirez** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [52](#), [72](#);
6. First Requests for Production of Documents and Interrogatory Demands **Dilson Suero** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [59](#), [69](#);
7. First Requests for Production of Documents and Interrogatory Demands Nos. [54](#), [65](#);
8. First Requests for Production of Documents and Interrogatory Demands **Maximo Aleys** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [55](#), [64](#);
9. First Requests for Production of Documents and Interrogatory Demands **Melvin De Leon** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [58](#), [71](#);
10. First Requests for Production of Documents and Interrogatory Demands **Carlos Breton** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [61](#), [67](#);
11. First Requests for Production of Documents and Interrogatory Demands **Jose Santiago** – served on **May 30, 2023 with responses/productions due on June 29, 2023** under CM/ECF Doc. Nos. [53](#), [66](#); and,
12. First Requests for Production of Documents and Interrogatory Demands **Jose Sanchez Lopez** – served on **June 9, 2023 with responses/productions due on July 10, 2023** under CM/ECF Doc. Nos. [81-82](#).

Further, on July 13, 2023, Defendants served First Requests for Documents and Interrogatory Demands for newly added Plaintiff, **Felipe Cabral**, shortly after he was named to the putative class under CM/ECF Doc. Nos. [86-87](#), and we anticipate that these responses and productions will be also delayed based the past course of conduct. On July 28, 2023, Defendants also served Requests for Admissions under CM/ECF Doc. Nos. [92-104](#) on all named Plaintiffs, at that time. Defendants also served additional discovery demands regarding newly added Plaintiff Jeffrey Diaz on July 31, 2023 under CM/ECF Doc. Nos. [105-106](#). See **Exhibit “A”**.

Defendants had also made previous attempts to obtain discovery including by counsel’s correspondence sent on July 25, 2023, attached herein as **Exhibit “B”**. In both the aforementioned correspondence, Defendants also attempted to schedule Plaintiffs’ depositions in light of the deadlines set forth in the Scheduling Order. See, **Exhibits “A” and “B”**.

Besides (late) Initial Disclosures, Defendants have not received any other discovery from Plaintiffs’ counsel nor even requests for extensions of time. Defense counsel attempted to schedule a meet-and-confer with Plaintiffs’ counsel to discuss discovery but received no response, whatsoever. A copy of Defense counsel’s August 3, 2023 email communication requesting a meet-and-confer and attempting to schedule same is attached as **Exhibit “C”**. It also must be noted that Defendants have dutifully responded to Plaintiffs’ formal discovery demands with corresponding voluminous productions.



Hon. Mary Kay Vyskocil  
August 7, 2023  
Page 3

Given Plaintiffs' inaction and the overall failure to prosecute, Defendants would be highly prejudiced in having to defend against Plaintiffs' allegations as set forth in this action without having the documents and information requested in their discovery demands timely exchanged, with ample opportunity to review.

Therefore, pursuant to Fed.R.Civ.P. 37 and in the interest of justice given this matter's procedural history, Plaintiffs should be precluded from offering the outstanding discovery, as outlined above, into evidence.

Furthermore, Defendants have attempted on multiple occasions to schedule Plaintiffs' depositions (which currently total 14 named individual Plaintiffs, with one Plaintiff most recently added to this litigation on July 27, 2023) without success or response from Plaintiffs' counsel. *See, Exhibits "A" and "B"*. Under these circumstances and coupled with the complete and utter lack of responsiveness, Defendants would be severely prejudiced in having to proceed with depositions and dispositive motion practice under the current deadlines. Therefore, Defendants respectfully request an extension of time to conduct fact discovery and so that it may have all available evidence for its defense of Plaintiffs' claims.

Lastly, it must be noted that an initial court-mandated mediation session was held in this matter on July 28, 2023, and a further session is scheduled for August 17, 2023. However, as set forth in the Scheduling Order, the use of these ADR mechanisms does not stay or modify the discovery dates set forth in the Order, thus necessitating this application.

Thank you, in advance, for your time and attention to this matter.

Respectfully submitted.

Very truly yours,  
WELBY, BRADY & GREENBLATT, LLP

By:  
Costas Cyprus (CC-1453)  
*Attorneys for Defendants*  
*Custom Metalcrafters, Inc.*  
*and Stephen Rosner*  
11 Martine Avenue, 15<sup>th</sup> Floor  
White Plains, New York 10606  
(914) 428-2100  
[ccyprus@wbglp.com](mailto:ccyprus@wbglp.com)

**The parties are directed to appear for a Conference on Tuesday, August 22 at 10:30 AM in Courtroom 18C of the Daniel Patrick Moynihan Courthouse. SO ORDERED.**

Date: 8/7/2023  
New York, New York

Mary Kay Vyskocil  
United States District Judge

CC/  
Enc.

cc:



Hon. Mary Kay Vyskocil  
August 7, 2023  
Page 4

**VIA PACER/ECF**

Levin-Epstein & Associates, P.C.  
Attorneys for Plaintiffs